IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FARAD CONTINUATION SHEET

CIVIL APPLICATION NO.2406 OF 2004

IN

FIRST APPEAL NO.820 OF 2004

Sunil Roshanlal Jain ...Applicant

Vs.

Municipal Corporation of
Greater Bombay and another ...Respondents

CORAM: A.S.OKA, J.

DATED: SEPTEMBER 1, 2004.

P.C.:

1. Shri Ghogare appearing for the Respondent No.2 pointed out that he was not heard when the Civil Application was finally disposed of on 3rd August 2004. In view of this submission the order dated 3rd August 2004 is recalled.

2. Heard the Counsel appearing for the parties. Perused the Affidavit-in-reply filed by the Constituted Attorney of Respondent No.2 in companion Appeals. The learned Counsel for the Applicant/Appellant submitted that Respondent No.1-Corporation has formulated a policy for protecting the certain category of mezzanine floor constructed prior to 15th August 1997 and the said policy is pending for approval of

the State Government. The averment to that effect is made in the Civil Application.

3. The learned Counsel appearing for the Respondent No.2 submitted that in so far as the Circular dated 25th September 1997 is concerned the same is withdrawn as is clear from the subsequent circular dated 21st April 1999. The learned Counsel for Respondent No.2 relied upon the Circular dated 21st April 1999 and contended that the policy which is formulated by the Respondent No.1-Corporation for tolerating the mezzanine floors which is pending for approval before the State Government is applicable only to mezzanine floors which are constructed in existing authorised buildings. He relied upon the paragraph No.9 of the aforesaid Affidavit-in-reply of Constituted Attorney of the Respondent No.2. It is stated in paragraph No.9 that the Respondent No.2 has constructed a chawl in the year 1980-1981 and admittedly the said chawl has been constructed without permission of the Respondent No.1-Corporation. He, therefore, submitted that the Circular dated 21st April 1999 cannot be the basis on which interim relief can be granted in favour of the Applicant.

4. I have considered the rival submissions. In paragraph No.9 of the Affidavit-in-reply the Constituted Attorney of Respondent No.2 has stated thus:

. "... I say that admitted the said chawl was constructed

without the permission of the Respondent No.1 but though the said chawl is unauthorised it falls under tolerated category...."

5. In view of the statement that though the construction made by the Respondent No.2 is unauthorised the same falls in the category of tolerated structures, interim relief cannot be refused to the Applicant especially when the policy of regularisation adopted by the Respondent No.1-Corporation is pending before the State Government for approval. Only after the decision is taken by the State Government, the policy will have to be interpreted and it will have to be decided whether the policy will apply to mezzanine floors which are constructed in unauthorised structures which are falling under the category of tolerated structures.

6. Hence, Civil Application is disposed of by passing following order :

i) The Respondent No.1-Corporation is restrained from removing the suit structure till further orders subject to the following conditions:

a) The Appellant/Applicant will file an undertaking in this Court within a period of three weeks from today stating therein that the Appellant will not create any third party interests in respect of the suit structure, the Appellant

will not part with possession of the suit structure in favour of any third party and the Appellant will not carry out any major additions or alterations to the suit strucuture without leave of this Court.

ii) If the Undertaking is not filed within the stipulated period, the interim relief granted shall automatically stand vacated.

iii) It will be open for the Respondents to apply for modification of this order after final decision is taken by the State Government on the policy of regularisation of mezzanine floors formulated by the Respondent No.1-Corporation. There will be no order as to costs.

7. At this stage the learned Counsel for Respondent No.2 makes a grievance that the Appellant is not paying rent in respect of the premises let out to the Appellant and is also not paying municipal property taxes in respect of the original structure and mezzanine floors. Liberty to the Respondent No.2 to take out appropriate proceedings in that behalf.

Judge.